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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Western Sahara

Working paper prepared by the Secretariat

Contents

		Paragraphs	Page
I.	Report and good offices of the Secretary-General	1–29	2
II.	Consideration by the Security Council	30–35	8
III.	Consideration by the General Assembly	36–43	8

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I. Report and good offices of the Secretary-General

1. Pursuant to General Assembly resolution 57/135 of 11 December 2002, the Secretary-General submitted to the Assembly at its fifty-eighth session a report on the question of Western Sahara (A/58/171). The report covered the period from 1 July 2002 to 30 June 2003 and reviewed the activities carried out by the Secretary-General in the exercise of his good offices.

2. During the period under review, the Secretary-General submitted three reports to the Security Council on the situation concerning Western Sahara (S/2003/565 and Corr.1, S/2003/1016 and S/2004/39), pursuant to Council resolutions 1469 (2003) of 25 March 2003, 1495 (2003) of 31 July 2003 and 1513 (2003) of 28 October 2003.

3. In its resolution 1469 (2003), the Security Council decided to extend the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 31 May 2003 and requested the Secretary-General to provide a report on the situation by 19 May 2003 as proposed by the Secretary-General in his letter of 19 March 2003 to the President of the Council (S/2003/341).

4. Pursuant to Security Council resolution 1469 (2003), the Secretary-General submitted to the Council a report (S/2003/565 and Corr.1) in which he informed the Council that during the reporting period, his Special Representative, William Lacy Swing (United States of America), had continued his regular contacts with representatives of the Government of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO). In addition, Mr. Swing had met regularly with senior officials of the parties and of neighbouring countries during his visits to Rabat, Tindouf, Algiers and Nouakchott.

5. The Special Representative had also met with senior officials from the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP) in Geneva and Rome to discuss the resolution of pending humanitarian issues related to the conflict, including the implementation by UNHCR, in cooperation with MINURSO, of confidence-building measures.

6. On the military side, MINURSO ground and air patrols continued to visit and inspect, on both sides of the defensive sand wall, or berm, Royal Moroccan Army and Frente POLISARIO ground units larger than company size in accordance with the ceasefire arrangements with both sides. MINURSO continued to cooperate with the parties on the marking and disposal of mines and unexploded ordnance.

7. With regard to the Saharan refugees in the Tindouf camps, UNHCR and the Special Representative held discussions with the parties in November and December 2002 on the implementation of the UNHCR confidence-building measures. The Governments of Algeria and Mauritania were also consulted with regard to the proposed activities. After consultations, both parties formally concurred with the commencement of limited UNHCR-operated telephone and personal mail services. A day after the start of the free one-way telephone service between the "27 February" refugee camp and the Territory, the Frente POLISARIO requested that the service be suspended so that it could put in place logistical arrangements, enabling the refugees from other, distant camps with no telephone service to travel to the UNHCR telephone centre to use the service. One month later, the telephone line had not yet been reactivated. The two-way personal mail exchange between the Tindouf

refugee camps and the city of Laayoune in the Territory had not been inaugurated either, pursuant to the request of the Government of Morocco, pending further technical discussions with UNHCR.

8. In paragraphs 23 to 49 of his report, the Secretary-General assessed the progress and problems with regard to the situation in Western Sahara since the appointment of his Personal Envoy. He recalled that in March 1997, after repeated breakdowns in the identification process, especially a particularly long impasse from the end of 1995 to the beginning of 1997, he had appointed James A. Baker III as his Personal Envoy. The Secretary-General had asked Mr. Baker to assess, in consultation with the parties, the feasibility of implementing the settlement plan in its current form, to examine whether there could be adjustments acceptable to the parties that would significantly improve the chances of implementing it in the near future and, if not, to advise him on other possible ways of resolving the conflict. After a tour of the region during which he had consulted with the leadership of the parties and neighbouring countries, the Personal Envoy informed the Secretary-General that, despite the difficulties and delays in the process, neither side had indicated any willingness to pursue any political solution other than the implementation of the settlement plan.

9. The Personal Envoy then organized a series of meetings of the parties from June to September 1997, which neighbouring countries also attended, thus marking the first time in many years that the two parties had met face-to-face to discuss substantive matters. During the last meeting, held from 14 to 16 September 1997, the parties reached agreement on the Houston Accords (S/1997/742, annex III), which allowed for the resumption of the identification process and, therefore, the implementation of the settlement plan. Despite the agreement that had been reached, difficulties in the identification process continued and, by the time it was completed, in December 1999, MINURSO had received 131,038 appeals. The Secretary-General pointed out in his report that the appeals process promised to be even lengthier, as well as more cumbersome and contentious, than the identification process, which had lasted five and a half years.

10. Three meetings were held under the auspices of the Personal Envoy during the summer of 2000, during which both sides failed to come up with an agreement on concrete solutions to the multiple problems of the settlement plan. During those meetings, the Personal Envoy expressed concern that the parties had failed to negotiate a solution to the problems owing to the high level of animosity between them. In his view, neither side had shown any disposition to depart from a winner-take-all mentality or appeared willing to discuss any possible political solution in which each could achieve some, but not all, of what it wanted, allowing the other side to achieve the same. During the third meeting, held in Berlin on 28 September 2000, the Personal Envoy asked the parties whether, without abandoning the settlement plan, they would be willing to pursue a political solution that might or might not be confirmed by a later referendum. The Frente POLISARIO responded that it was not ready to discuss anything outside the settlement plan. For its part, the Moroccan delegation stated that it was prepared to initiate a sincere and frank dialogue with the Frente POLISARIO, with the assistance of the Personal Envoy, to work out a lasting and definitive solution that would take into account the sovereignty and territorial integrity of Morocco, as well as the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Sahara region. The Frente

POLISARIO rejected the Moroccan proposal and reiterated that it would cooperate and pursue dialogue only in the context of the settlement plan.

11. In early 2001, the Personal Envoy was able to determine that Morocco, as the administrative Power in Western Sahara, was prepared to support a draft framework agreement on the status of Western Sahara (S/2001/613, annex I), that envisaged a devolution of authority to the inhabitants of the Territory, with final status to be determined by a referendum five years later. Once he had ascertained the willingness of the Government of Morocco to support the draft framework agreement, the Personal Envoy presented it to the Government of Algeria and to the Frente POLISARIO, which provided their views on the agreement (ibid., annexes II and IV). In view of the strong reservations expressed by the Government of Algeria and the unwillingness of the Frente POLISARIO to consider the draft framework agreement, the Security Council adopted resolution 1359 (2001), in which it supported the Secretary-General's proposal to invite all parties to meet directly, or through proximity talks under the auspices of the Personal Envoy, to discuss the draft framework agreement and to negotiate any specific changes to it. The Council also encouraged the parties to discuss any other proposal for a political solution that might be put forward by them to arrive at a mutually acceptable agreement.

12. Following the adoption of resolution 1359 (2001), the Personal Envoy met with high-level representatives of the Frente POLISARIO and the Governments of Algeria and Mauritania at Pinedale, Wyoming (United States), in August 2001. Neither the Government of Algeria nor the Frente POLISARIO had been willing to engage in a detailed discussion of the draft framework agreement. Subsequently, the Personal Envoy met with President Abdelaziz Bouteflika and other high-level representatives of the Government of Algeria and then twice with King Mohammed VI of Morocco and high-level officials of the Government of Morocco. Since the Secretary-General had already indicated in previous reports that, in the view of the Personal Envoy, it was highly unlikely that the settlement plan could be implemented in its current form in a way that could bring about an early, durable and agreed resolution of the dispute over Western Sahara, he recalled that in his report of 19 February 2002 (S/2002/178) he had presented four options, which the Security Council could have considered in addressing the conflict over Western Sahara.[1] The Secretary-General further recalled that the Council had not been able to agree on any of the options but had expressed instead, in its resolution 1429 (2002), its continued strong support for his efforts and those of his Personal Envoy to find a political solution to the long-standing dispute, and had invited the Personal Envoy to pursue those efforts, taking into account the concerns expressed by the parties. The Council had also expressed its readiness to consider any approach providing for self-determination that might be proposed by the Secretary-General and his Personal Envoy, consulting, as appropriate, others with relevant experience.

13. Pursuant to that request, the Personal Envoy, assisted by a constitutional expert, drafted the peace plan for self-determination of the people of Western Sahara (S/2003/565 and Corr.1, annex II), which he presented and explained to the parties and neighbouring countries during his visit to the region from 14 to 17 January 2003. The Personal Envoy also shared the peace plan with the members of the Security Council in early March 2003. The Secretary-General stated his belief that the peace plan provided a fair and balanced approach to a political solution to the question of Western Sahara, providing each side with some, but not all, of what it wanted. The peace plan incorporated elements of the draft framework agreement

that had been accepted by the Government of Morocco, as well as elements of the settlement plan and the Houston Accords, which had been agreed to by both sides and favoured by the Frente POLISARIO. In addition, the peace plan envisaged a period of transition during which there would be a division of responsibilities between the parties before the holding of a referendum for self-determination that would provide the bona fide residents of Western Sahara with an opportunity to decide their future. Unlike the settlement plan, the peace plan did not require the consent of both parties at each step of its implementation. The responses of the parties and neighbouring countries to the peace plan were provided in annex III to the report of the Secretary-General (S/2003/565).

14. In the conclusion of the report, the Secretary-General observed that the main objection of the Government of Morocco to the peace plan seemed to be that, in the referendum to determine the final status of Western Sahara, one of the ballot choices was independence, although that was also one of the two ballot choices under the settlement plan that the Government of Morocco had accepted. The Secretary-General pointed out that it would be difficult to envision a political solution that, as required by the Security Council in its resolution 1429 (2002), would provide for self-determination but would preclude independence as one of the several ballot questions. He proposed an amendment to the peace plan that could assuage Morocco's concern over the ballot for the referendum consisting of a third ballot choice that would provide for "continuation of the division of authority set forth in article III of the peace plan"; in other words, self-government or autonomy.

15. The Frente POLISARIO, in turn, objected to the peace plan because it was not the settlement plan and suggested that the parties revert to the implementation of the settlement plan, with two new elements: that the Identification Commission process all 130,000 appeals, with no requirement that sheikhs participate and with the Commission's decision accepted as final; and (b) that a mechanism be added to provide for enforcement of the results of the referendum under Chapter VII of the Charter of the United Nations. The Secretary-General observed that, even with the two new elements, the consent of the parties would still be required at every stage of the implementation of the settlement plan, and that it would be difficult to envision Morocco consenting to the proposal of the Frente POLISARIO. It appeared quite unlikely that the Council would decide to add a Chapter VII mechanism to enforce the results of the referendum, given that the Council would not choose one of the four options set out in the report of the Secretary-General of 19 February 2002 (S/2002/178) because the parties would not consent or agree to one of them.

16. The Secretary-General noted that after more than 11 years and an amount of assessed contributions close to $500 million, it should be acknowledged that the Security Council was not going to resolve the problem of Western Sahara without asking that one or both of the parties do something that they would not be otherwise prepared to do. The Secretary-General recommended that the Council endorse the peace plan, which his Personal Envoy had developed as a fifth option, and asked the parties to agree to it and to work with the United Nations to implement it. In order to give the Council sufficient time to reflect on its decision, he proposed that the mandate of MINURSO be extended until 31 July 2003.

17. On 31 July 2003, the Security Council adopted resolution 1495 (2003), in which it decided to extend the mandate of MINURSO until 31 October 2003. The Council continued to support strongly the efforts of the Secretary-General and his

Personal Envoy and similarly supported the peace plan as an optimum political solution on the basis of agreement between the parties and called upon the parties to work with the United Nations and with each other towards its acceptance and implementation.

18. Pursuant to Security Council resolution 1495 (2003), on 16 October 2003 the Secretary-General submitted a report (S/2003/1016) to the Council in which he informed it that, following the adoption of resolution 1495 (2003), Morocco had sent a high-level delegation on 17 September 2003 to meet with his Personal Envoy in Houston, Texas, United States. During the meeting, there had been a discussion on issues pertaining to the peace plan. The delegation of Morocco had asked for some more time to reflect and consult before giving its final response to the operative paragraphs of the resolution, in particular the second, in which the Council had called upon the parties to work with the United Nations and with each other towards acceptance and implementation of the peace plan.

19. The Secretary-General informed the Council that following the appointment of Mr. Swing as his new Special Representative for the Democratic Republic of the Congo, he intended to appoint Alvaro de Soto (Peru) as his Special Representative for Western Sahara. On 7 October 2003, MINURSO completed the transfer of all sensitive files of the Identification Commission to the United Nations Office at Geneva for safe storage. In the interest of sound management, the size of the Identification Commission was being further reduced and its staff were scheduled to be fully withdrawn from the Mission by 31 December 2003.

20. Among other developments, on 1 September 2003, ICRC repatriated to Morocco 243 Moroccan prisoners of war who had been released by the Frente POLISARIO on 14 August 2003 in response to a request by a Member State. After interviewing four individuals in the Territory, ICRC was also able to clarify the fate of the four persons who had appeared on the Frente POLISARIO list of unaccounted-for individuals. No progress was reported on the package of confidence-building measures, which would have included a limited telephone and personal mail service between the "27 February" camp in Tindouf and the Territory, despite an agreement reached by UNHCR and the parties.

21. Concluding his report, the Secretary-General called the release of the 243 Moroccan prisoners of war, the clarification of the fate of the four previously unaccounted-for persons and the agreements on the implementation of confidence-building measures positive steps. He appealed to the Frente POLISARIO to expedite, in compliance with international humanitarian law and numerous Security Council resolutions and presidential statements, the release of the remaining 914 prisoners of war, most of whom had been in detention for more than 20 years.

22. The Secretary-General recalled that the Frente POLISARIO and Morocco had informed him officially on 8 and 10 March 2003 respectively of their objections with regard to the peace plan presented to them by his Personal Envoy. By its letter of 6 July, however, the Frente POLISARIO had officially accepted the plan. He also recalled that in early July, an adjusted text of the peace plan had been circulated to the parties and neighbouring States that added a third ballot choice providing for the continuation of the division of authority set out in article III of the peace plan; in other words, self-government or autonomy. Although the peace plan had thus been adjusted to address the concerns of Morocco and further consultations had been held in Houston on 17 September 2003 between the Personal Envoy and a delegation

from Morocco, Morocco had thus far not relinquished its opposition to the peace plan. However, following those consultations, the Personal Envoy recommended that the Secretary-General accede to Morocco's request to give it more time to reflect and consult before giving its final response. The Secretary-General agreed to extend the mandate of MINURSO for three months, until 31 January 2004, and expressed hope that he would receive Morocco's response to resolution 1495 (2003) before the end of the year.

23. On 28 October 2003, the Security Council adopted resolution 1513 (2003), by which it decided to extend the mandate of MINURSO until 31 January 2004. It also requested the Secretary-General to provide a report on the situation before the end of the mandate.

24. Pursuant to resolution 1513 (2003), the Secretary-General submitted a report (S/2004/39) on 19 January 2004 in which he informed the Council that on 23 December 2003, his Personal Envoy had had a further meeting with a Moroccan delegation to discuss issues pertaining to Morocco's final response to the operative paragraphs of resolution 1495 (2003) of 31 July 2003. Given the Personal Envoy's assignment with the Government of the United States at that time, and in order to give him time to consult further with the Government of Morocco on the issue, the Secretary-General requested that the mandate of MINURSO be extended until 30 April 2004.

25. The Secretary-General further reported that his new Special Representative for Western Sahara, Mr. de Soto, had assumed his duties in Laayoune on 29 October 2003. In November 2003, the Special Representative had visited Rabat, Tindouf, Algiers and Nouakchott, where he had held introductory meetings with senior officials from the Government of Morocco, the Frente POLISARIO and the Governments of Algeria and Mauritania.

26. On 7 November 2003, the Frente POLISARIO had announced the release of a further 300 Moroccan prisoners of war who had been repatriated to Morocco on the following day under the auspices of ICRC. While he welcomed that step, which involved liberating the largest group of Moroccan prisoners ever, the Secretary-General pointed out that 613 prisoners were still in detention, most of them for more than 20 years. He reiterated his call to the Frente POLISARIO to expedite the release of all remaining prisoners of war, in compliance with international humanitarian law and numerous Security Council resolutions and presidential statements.

27. With regard to the Saharan refugees, after further consultations during the months of November and December 2003 between the Special Representative, senior UNHCR staff and Moroccan, Algerian and Frente POLISARIO authorities, the Secretary-General was pleased to report that the UNHCR-operated telephone connection between the refugee camps in Algeria and the Territory had been re-established on 12 January 2004. The telephone service between the "27 February School" camp in the Tindouf area in Algeria and the Territory was functioning and would be gradually extended to other locations. Meanwhile, discussions on the exchange of family visits had continued and a new plan of action had been submitted by the Special Representative and UNHCR to Morocco, the Frente POLISARIO and Algeria for their final consideration.

28. In the light of the positive developments following the round of consultations on confidence-building measures, the Secretary-General called upon the Frente POLISARIO, Morocco and Algeria to consent to the exchange of family visits beginning in February 2004, to be implemented by UNHCR. Following the discussions between the Personal Envoy and the Moroccan delegation, the Secretary-General recommended that the mandate of MINURSO be extended until 30 April 2004, and expressed hope that his Personal Envoy would receive Morocco's response before the end of April 2004.

29. In its resolution 1523 (2004) of 30 January 2004, the Security Council decided to extend the mandate of MINURSO until 30 April 2004. It also requested the Secretary-General to provide a report on the situation.

II. Consideration by the Security Council

30. The Security Council considered the reports of the Secretary-General (S/2003/565, S/2003/1016 and S/2004/39).

31. In its resolution 1469 (2003) of 25 March 2003, the Security Council decided to extend the mandate of MINURSO until 31 May 2003 and requested the Secretary-General to provide a report on the situation by 19 May 2003, as proposed by the Secretary-General in his letter to the President of the Council of 19 March 2003 (S/2003/341).

32. In its resolution 1485 (2003) of 30 May 2003, the Security Council decided to extend the mandate of MINURSO until 31 July 2003 in order to consider further the report of the Secretary-General (S/2003/565).

33. In its resolution 1495 (2003) of 31 July 2003, the Security Council expressed its continued support for the efforts of the Secretary-General and his Personal Envoy and for the peace plan. It also called upon the Frente POLISARIO to release all remaining prisoners of war and for both Morocco and the Frente POLISARIO to work with ICRC to resolve the fate of persons who were unaccounted for. It further called upon the parties to collaborate with UNHCR to implement confidence-building measures and for the international community to work with UNHCR and WFP in an effort to alleviate the deteriorating food situation among the refugees. The Council extended the mandate of MINURSO until 31 October 2003 and requested the Secretary-General to submit a report on progress made in implementing the resolution.

34. In its resolution 1513 (2003) of 28 October 2003, the Security Council decided to extend the mandate of MINURSO until 31 January 2004 and requested the Secretary-General to provide a report on the situation by the end of the mandate.

35. In its resolution 1523 (2004) of 30 January 2004, the Security Council decided to extend the mandate of MINURSO until 30 April 2004 and requested the Secretary-General to provide a report on the situation before the end of the mandate.

III. Consideration by the General Assembly

36. During the general debate of the fifty-eighth session of the General Assembly, a number of representatives referred to the question of Western Sahara in their

statements. During the debate in the Special Political and Decolonization Committee (Fourth Committee), held from 30 September to 16 October 2003, a number of Member States also made reference to the question of Western Sahara, namely, Algeria, Antigua and Barbuda (speaking on behalf of the Caribbean Community), Burkina Faso, the Congo, Cuba, Gabon, Guinea, Haiti, Malawi, Mozambique, Namibia, Nigeria, Papua New Guinea, Peru (speaking on behalf of the Rio Group), the United Republic of Tanzania, Senegal, South Africa, Timor-Leste, Venezuela and Zambia.

37. At its 4th meeting, on 8 October 2003, the Committee heard the following petitioners: Antonio López Ortiz, Secretary, Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui; Felipe Briones Vives, International Association of Jurists for Western Sahara; Txomin Aurrekoetxea, Member, Basque Parliament (Spain); Inés Miranda Navarro, Attorney and Member, Bar Association of Las Palmas (Spain); Mouloud Said, Frente POLISARIO; Soledad Monzón Cabrera, Member, Congress for Las Palmas (Spain); Alejandro Javier Rodriguez Carrión, Professor, International Law, University of Málaga, Spain; Hilt Teuwen, Oxfam Solidarity (Belgium); Miguel Mayol i Raynal, Member of the European Parliament Intergroup "Peace of the Saharawi People"; and Vanessa Ramos, Secretary-General, American Association of Jurists.

38. At its 7th meeting, on 14 October 2003, the Fourth Committee had before it a draft resolution entitled "Question of Western Sahara" (A/C.4/58/L.4), submitted by Algeria, Angola, Barbados, Fiji, Grenada, Haiti, Lesotho, Mozambique, Namibia, Nigeria, Saint Vincent and the Grenadines, South Africa, Timor-Leste, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe, subsequently joined by Antigua and Barbuda, Belize, Burundi, Ethiopia, Jamaica, Kenya, the Federated States of Micronesia, Saint Lucia, Sierra Leone and Trinidad and Tobago.

39. At the same meeting, the Committee decided to defer action on draft resolution A/C.4/58/L.4 for 48 hours.

40. At the 9th meeting, on 16 October, the Chairman submitted to the Committee a draft resolution entitled "Question of Western Sahara" (A/C.4/58/L.6).

41. At the same meeting, the Committee decided to replace draft resolution A/C.4/58/L.4 with draft resolution A/C.4/58/L.6. The Chairman then orally amended the seventh preambular paragraph by adding commas before and after the words "concerning the peace plan".

42. Also at the same meeting, after the adoption of the draft resolution, a statement in explanation of position was made by the representative of Italy on behalf of the States Members of the United Nations that are members of the European Union; statements were also made by the representatives of Morocco and Algeria (see A/C.4/58/SR.9).

43. In its resolution 58/109 of 9 December 2003, the General Assembly expressed its support for the peace plan for the self-determination of the people of Western Sahara and for the efforts of the Secretary-General and his Personal Envoy to find a mutually acceptable political solution to the dispute over Western Sahara and commended the parties for their spirit of cooperation in supporting those efforts. It also called upon the parties to cooperate with ICRC to resolve the fate of the people unaccounted for and to release without further delay all individuals who had been held since the start of the conflict. The Assembly requested the Special Committee

on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to report on the situation in Western Sahara at its fifty-ninth session and invited the Secretary-General to submit a report, also at its fifty-ninth session, on the implementation of the resolution.

Notes

[1] The four options, which would not require the concurrence of the parties, are: (a) implementation of the settlement; (b) a revised draft framework agreement; (c) division of the Territory; (d) withdrawal of MINURSO, were discussed in detail in a previous working paper on Western Sahara prepared by the Secretariat (A/AC.109/2002/10).